EMPLOYERS' LIABILITY INSURANCE—RIGHT TO CONTROL LITIGATION IN NAME OF ANOTHER PARTY.—An insurer against employers' liability, whose contract gives it the right to defend against suits by employees against the assured, and which, after a judgment in excess of the insurance has been obtained against the assured, agrees to perfect an appeal, is held, in *Getchell & Martin L. & Mfg. Co.* v. *Employers' Liability Assur. Corp.* (Iowa), 62 L. R. A. 617, not to be liable for negligently failing to do so, whereby the judgment is affirmed, in the absence of anything to show that the judgment was erroneous, and that plaintiff could not have succeeded on a second trial. With this case is a note on liability involved in the exercise of the right to control or carry on litigation in the name of another party.

CONTRACTS—ATTORNEY AND CLIENT—AGREEMENT FOR FEES IN DIVORCE PROCEEDING.—A contract between a solicitor and a wife, complainant in divorce proceedings, providing that the solicitor should receive a percentage of the alimony decreed to the wife, is void as against public policy.

A contract between an attorney and a wife, plaintiff in capias proceedings against her husband, providing that the attorney should receive a percentage of the judgment recovered against her husband, is void as against public policy.

A valid contract between attorney and client for fees is not abrogated by an attempt to merge such contract in a subsequent void contract for fees.

Where a contract between attorney and client for fees is void, the attorney may recover what his services are reasonably worth. *McCurdy* v. *Dillon* (Sup. Ct. Mich. March 8, 1904).

TRIAL—MISCONDUCT OF COUNSEL.—Upon the trial of issues of fact to a jury, it is the duty of the trial judge to prevent such misconduct on the part of counsel toward witnesses as tends to the suppression of the truth, all declarations of fact by counsel during the introduction of evidence, the repetition of incompetent questions to which objections have been sustained, and all comments upon the evidence until the time for argument has arrived.

The permission of such misconduct by counsel for the prevailing party, against objection by his adversary, is error for which a judgment should be reversed, unless it affirmatively appears that, by instructions from the court or retraction by counsel, or both, the prejudicial tendency of the misconduct has been averted. *Cleveland &c. R. Co* v. *Pritschau* (Ohio), 69 N. E. 663. To the same effect, see, *ante*, p. 840.

NATIONAL BANKS—INSOLVENCY—STOCKHOLDERS—DOUBLE LIABILITY—TRANSFER OF SHARES.—Defendant, prior to the failure of a national bank in which his son was a director, owned certain shares of the bank's stock, which he sold to his son, receiving in payment a demand note, secured by certain collateral. At the time of the sale the son promised that he

would see that the shares were properly transferred, but he failed to do so. Defendant made no attempt to see that the stock was transferred, and it stood in his name on the books of the bank at the time of its failure. *Held*, that the son was *prima facie* the father's agent to transfer the shares, and that in the absence of proof that the transfer was in good faith, and of a prompt attempt to have the stock transferred on the books of the bank, the father was liable to assessment thereon. *Scho field* v. *Twining* (C. C. E. D. Pa.), 127 Fed. 486. Citing *Earle* v. *Carson*, 188 U. S. 422; *Rankin* v. *Fidelity Trust Co.*, 189 U. S. 242.

FEDERAL COURTS—RULES OF EVIDENCE IN CRIMINAL CASES—The rules of evidence governing federal courts in criminal cases are those which were in force in the state at the time such courts were established therein, subject to such changes as have been made by Congress, and are not changed by subsequent state enactments. *Withaup* v. *United States* (C. C. A. Eighth Circuit), 127 Fed. 530.

Per Vandevanter, Circuit Judge:

"The states are without power to prescribe or change the rules of evidence in trials for offenses against the United States, and there is no act of Congress which makes the statutes of the several states, upon this subject, as enacted and changed from time to time, applicable to trials for these offenses. In *United States* v. *Reid*, 12 How. 361, 363, 365, 13 L. Ed. 1023, it became necessary for the Supreme Court to determine the rules of evidence controlling courts of the United States in such trials, and especially to determine whether a court of the United States within the State of Virginia, in a trial for a criminal offense against the United States, should give effect to a statute of that state, adopted in 1849, changing the rules of evidence in that state applicable to the trial of criminal cases. The court said, referring to the judiciary act of 1789 (Act Sept. 24, 1789, c. 20, 1 Stat. 73), and the crimes act of 1790 (Act April 30, 1790, c. 9, 1 Stat. 112), at page 365, 12 How., 13 L. Ed. 1023:

'But neither of these acts makes any express provision concerning the mode of conducting the trial after the jury are sworn. They do not prescribe any rule by which it is to be conducted, nor the testimony by which the guilt or innocence of the party is to be determined. Yet, as the courts of the United States were then organized, and clothed with jurisdiction in criminal cases, it is obvious that some certain and established rule upon this subject was necessary to enable the courts to administer the criminal jurisprudence of the United States. And it is equally obvious that it must have been the intention of Congress to refer them to some known and established rule, which was supposed to be so familiar and well understood in the trial by jury that legislation upon the subject would be deemed superfluous. This is necessarily to be implied from what these acts of Congress omit, as well as from what they contain.

'But this could not be the common law as it existed at the time of the